

MULTIPURPOSE RESERVATIONS
FOR A STATE AGENCY

76. Subject to the conditions stated below in paragraphs No. 76 through 91, the Applicant, Montana Department of Natural Resources and Conservation (DNRC) pursuant to Application No. 9942-r42C, is granted a reservation of 383,000 acre-feet per year of water allowing the total appropriation of not more than 450,000 acre-feet of water per year, from the Tongue River, to be stored in an enlarged Tongue River Reservoir and to be used for all beneficial uses allowed by Montana law.

77. The reservation of the Department of Natural Resources and Conservation is subject to the following:

(a) Part of this reservation is to be used to meet the purpose of the Department of State Lands reservation for 1,431 acre-feet per year from the Tongue River (Application 9931-r) and 390 acre-feet per year from the Tongue River (Application 9933-r).

(b) Part of this reservation is to be used to meet the request of the Big Horn Conservation District's reservation request for 1,034 acre-feet per year from the Tongue River (Application 9952-r43P).

(c) Part of this reservation is to be used to meet the reservation request of the Rosebud Conservation District for 7,144 acre-feet per year from the Tongue River (Application No. 10,005-r42KJ).

(d) Part of this reservation is to be used to meet the reservation request of North Custer Conservation District for 10,897 acre-feet per year from the Tongue River (Application No. 9947-r42M).

(e) The Department of Natural Resources is to cause to release an average of 75 cfs from the reservoir for instream flow purposes below the reservoir.

78. The reservation is ordered adopted subject to any final determination of prior existing water rights in the source of supply as provided for by Montana law.

79. The reservation is ordered adopted subject to all existing and/or inchoate senior water rights in the source of supply, including but not limited to any decreed rights or federal or Indian reserved rights, but not subject to any rights to appropriate water which may arise from the permit applications suspended by the Yellowstone Moratorium (Section 89-8-103 et seq., R.C.M. 1947). Pursuant to Section 89-8-105(2), R.C.M. 1947, the reservation is a preferred use over any right to appropriate water which may arise from the permit applications suspended during the Yellowstone moratorium.

80. The reservant may only appropriate water pursuant to the reservation at such times when to so appropriate will not adversely affect any senior right in the source of supply as set forth in the preceding paragraph.

81. The reservant shall as soon as practicable, but not more than five (5) years, submit detailed plans to the Board for the Board's approval.

(a) The plan shall include a list of accomplishments to date, construction plans (if available), a construction schedule, and a detailed assessment of specific uses and benefits. The plan shall where applicable specify in detail and show on maps (using 7½ minute quadratic USGS maps, if available) the proposed sources and points of diversion; sites and sizes of facilities; the rate of diversion and volume of water to be diverted from each source and point of diversion; the volume of storage at each facility; the period of diversion for each diversion; the period of use for each use; the frequency and magnitude of drawdown; the interbasin location of diversion, impoundment, and conveyance facilities; and preliminary engineering plans of diversion, impoundment, and conveyance facilities.

(b) The reservant shall not commence construction of diversion, impoundment or conveyance facilities or any other portion of the plan except upon approval of the Board. The reservant shall submit a detailed engineering plan of the proposed project prior to the construction starting date.

(c) The reservant shall include in its plan provision for maintenance of instream flow releases from the enlarged reservoir in such amounts as shall be set forth in the plan and approved by the Board.

(d) Upon review of the plan submitted pursuant to subparagraph (a), (b), or (c) above, the Board may at its discretion ^{approve} modify or deny the proposed plan or a portion thereof. Conditions for denying a plan may result from one or more of the following:

- (1) Water is not available at the intended diverions for this appropriation, or
 - (2) The plan or any portion thereof adversely affects prior water rights, or
 - (3) The plan or any portion there of is inadequate, or
 - (4) The plan or any portion thereof is incompatible with local or regional planning efforts, or
 - (5) The plan or any portion thereof fails to meet the best interests of the people of Montana, or
 - (6) The plan or any portion thereof fails to meet the objectives of the reservation, or
 - (7) The plan or any portion thereof would not be in compliance with pertinent state or federal laws or environmental standards, or
 - (8) The plan or any portion thereof proposes a use of water which is not a beneficial use, or
 - (9) The plan or any portion thereof does not demonstrate adequate and reasonable water conservation measures.
 - (10) The plan is not reasonable or is speculative.
- (e) Public notice shall be given of any plans of the reservant.
- (f) The Board shall provide for the public comment on the proposed plan prior to the Board's decision, and, may hold public hearings.

82. The reservant shall submit to the Board an annual progress report on each anniversary date of the effective date of the adoption of the reservation. This condition shall continue in effect until completion of the project. The annual progress report shall set forth accomplishments toward completion of the project, a schedule of anticipated progress, and other information as may be prescribed by the Board. Feasibility studies; detailed economic, engineering, environmental, and marketing studies; construction and operating plans; water contracts; and any other studies and plans prepared in conjunction with the reservation shall accompany the annual progress report submitted next following their completion, except that environmental statements and other reports having time limits for review or comment shall be submitted immediately upon their completion.

83. Adequate measuring devices approved by the DNRC shall be installed during construction on all reservation facilities. The water diverted, distributed, and/or stored shall be measured and recorded daily throughout the life of the project. Such records shall be submitted to the Board or DNRC upon request.

84. Any change in point of diversion, place of use, use, quantities of water allocated to various uses, place of storage, distribution facilities, or time and rate of distribution shall be made in accordance with sections 89-892 and 89-893 R.C.M. 1947. The Board shall approve or deny the proposed change, giving due consideration to the requirements of the public interest. No change shall be approved which does not meet all of the pertinent criteria of Section 89-890, R.C.M. 1947, for the issuance of an order adopting a reservation.

(a) Public notices shall be given of any request for a change in point of diversion, place of use, use, quantities of water allocated to various uses, place of storage, distribution facilities or time or rate of distribution.

(b) The Board shall provide for the public to comment on the request and, may hold public hearings.

85. The reservant may, with approval of the Board, issue temporary permits for the use of reserved water, provided such temporary permits are subject to the terms and conditions it considers necessary for the protection of the objectives of the reservation.

86. The reservant shall participate in and adhere to water management operations that may be implemented in the future by the State of Montana.

87. Pursuant to Section 39-890(6), R.C.M. 1947, the Board shall periodically, but at least once every ten years, review this reservation, including feasibility studies, detailed plans, environmental statements, and annual reports, to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the Board may at its discretion extend, modify, or revoke the reservation.

(1) Circumstances which may evidence the above include, but are not limited to, the following:

(b) Failure of anticipated demand for water for the purpose of the reservation to materialize;

(c) Inadequacy of reservation facilities;

(d) Noncompliance with Montana or federal statutes or environmental standards;

(e) Incompatibility with local or regional planning efforts;

(f) Use of the reserved water for other than beneficial use as defined by Montana law;

(g) Noncompliance with any of the conditions of this Order.

(2) (a) Public notice shall be given of any review of the reservation;

(b) The Board shall provide for the public to comment on the review of the reservation, and, may hold public hearings.

88. Any and all liability arising from the reservation is the sole responsibility of the reservant. In ordering a reservation adopted, the Board assumes no liability.

89. Conditions of this Order may be modified or withdrawn by the Board at its discretion should future circumstances warrant. In such event notice will be given, and, if objections are received, a hearing will be held.

90. If part of this Order is invalid, all valid parts remain in effect. If part of this Order is invalid in one or more of its applications, the part remains in effect for all valid applications.

MULTIPURPOSE RESERVATIONS
FOR FEDERAL AGENCIES

92. Subject to the conditions stated below in paragraphs No. 92 through 108, the Applicant, U.S. Bureau of Reclamation, pursuant to Application No. 12330-r42KJ, is granted a reservation of water allowing the total appropriation of not more than 121,800 acre-feet of water per year from the Yellowstone River, to be stored in the proposed Cedar Ridge Project and to be used for municipal, industrial, recreational, and fish and wildlife purposes.

93. Subject to the conditions stated below in paragraphs No. 92 through 108, the Applicant, U.S. Bureau of Reclamation, pursuant to Application No. 12332-r42K, is granted a reservation of water allowing the total appropriation of not more than 539,000 acre-feet of water per year from the Yellowstone River, to be stored in the proposed Sunday Creek Reservoir and to be used for municipal, industrial, recreational, and fish and wildlife purposes.

94. Subject to the conditions stated below in paragraphs No. 92 through 108, the Applicant, U.S. Bureau of Reclamation, pursuant to Application No. 12331-r43Q, is granted a reservation of water allowing the total appropriation of not more than 68,700 acre-feet of water per year from the Yellowstone River, to be stored in the proposed Buffalo Creek Reservoir and to be used for municipal, industrial, recreational, and fish and wildlife purposes.

95. The reservant, U.S. Bureau of Reclamation, shall seek Congressional authorization for a feasibility study of the proposed Cedar Ridge Project within five years of the effective date of the adoption of the reservation.

96. The reservation is ordered adopted subject to any final determination of prior existing water rights in the source of supply as provided for by Montana law.

97. The reservation is ordered adopted subject to all existing and/or inchoate senior water rights in the source of supply, including but not limited to any decreed rights or federal or Indian reserved rights, but not subject to any rights to appropriate water which may arise from the permit applications suspended by the Yellowstone Moratorium (Section 89-8-103 et seq., R.C.M. 1947). Pursuant to Section 89-8-105(2), R.C.M. 1947, the reservation is a preferred use over any right to appropriate water which may arise from the permit applications suspended during the Yellowstone moratorium.

98. The reservant may only appropriate water pursuant to the reservation at such times when to so appropriate will not adversely affect any senior right in the source of supply as set forth in the preceding paragraph.

99. The reservant shall as soon as practicable, but not more than seven (7) years, submit preliminary plans to the Board for the Board's approval.

(a) The plan shall include a list of accomplishments to date, construction plans (if available), a construction schedule, and a detailed assessment of specific uses and benefits. The plan shall where applicable specify in detail and show on maps (using 7½ minute quadratic USGS maps, if available) the proposed sources and points of diversion; sites and sizes of facilities; the rate of diversion and volume of water to be diverted from each source and point of diversion; the volume of storage at each facility; the period of diversion for each diversion; the period of use for each use; the frequency and magnitude of drawdown; the intended location of diversion, impoundment, and conveyance facilities; and preliminary engineering plans of diversion, impoundment, and conveyance facilities.

(b) The reservant shall not commence construction of diversion, impoundment, or conveyance facilities or any other portion of the plan except upon approval of the Board. The reservant shall submit a detailed engineering plan of the proposed project prior to the construction starting date.

100. The reservant shall submit to the Board an annual progress report on each anniversary date of the effective date of the adoption of the reservation. This condition shall continue in effect until completion of the project. The annual progress report shall set forth accomplishments toward completion of the project, a schedule of anticipated progress, and other information as may be prescribed by the Board. Feasibility studies; detailed economic, engineering, environmental, and marketing studies; construction and operating plans; water contracts; and any other studies and plans prepared in conjunction with the reservation shall accompany the annual progress report submitted next following their completion, except that environmental statements and other reports having time limits for review or comment shall be submitted immediately upon their completion.

101. Adequate measuring devices approved by the DNRC shall be installed during construction on all reservation facilities. The water diverted, distributed, and/or stored shall be measured and recorded daily throughout the life of the project. Such records shall be submitted to the Board or DNRC upon request.

102. Any change in point of diversion, place of use, use, quantities of water allocated to various uses, place of storage, distribution facilities, or time and rate of distribution shall be made in accordance with sections 89-892 and 89-893, R.C.M. 1947. The Board shall approve or deny the proposed change, giving due consideration to the requirements of the public interest. No change shall be approved which does not meet all of the pertinent criteria of Section 89-890, R.C.M. 1947, for the issuance of an order adopting a reservation.

(a) Public notices shall be given of any request for a change in point of diversion, place of use, use, quantities of water allocated to various uses, place of storage, distribution facilities or time or rate of distribution.

(b) The Board shall provide for the public to comment on the requests, and, may hold public hearings.

(c) The reservant shall include in its plan provision for maintenance of instream flow releases from the enlarged reservoir in such amounts as shall be set forth in the plan and approved by the Board.

(d) Upon review of the plan submitted pursuant to subparagraph (a), (b), or (c) above, the Board may at its discretion ^{approve} modify or deny the proposed plan or a portion thereof conditions denying a plan may result from one or more of the following:

- (1) Water is not available at the intended diversions for this appropriation, or
- (2) The plan or any portion thereof adversely affects prior water rights, or
- (3) The plan or any portion thereof is inadequate, or
- (4) The plan or any portion thereof is incompatible with local or regional planning efforts, or
- (5) The plan or any portion thereof fails to meet the best interests of the people of Montana, or
- (6) The plan or any portion thereof fails to meet the objectives of the reservation, or
- (7) The plan or any portion thereof would not be in compliance with pertinent state or federal laws or environmental standards, or
- (8) The plan or any portion thereof proposes a use of water which is not a beneficial use, or
- (9) The plan or any portion thereof does not demonstrate adequate and reasonable water conservation measures.
- (10) The plan is not reasonable or is speculative.

(e) Public notice shall be given of any plans of the reservant.

(f) The Board shall provide for the public comment on the proposed plan prior to the Board's decision, and, may hold public hearings.

103. The reservant may, with approval of the Board, issue temporary permits for the use of reserved water, provided such temporary permits are subject to the terms and conditions it considers necessary for the protection of the objectives of the reservation.

104. The reservant shall participate in and adhere to water management operations that may be implemented in the future by the State of Montana.

105. Pursuant to Section 89-890(6), R.C.M. 1947, the Board shall periodically, but at least once every ten years, review this reservation, including feasibility studies, detailed plans, environmental statements, and annual reports, to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the Board may at its discretion extend, modify, or revoke the reservation.

(1) Circumstances which may evidence the above include, but are not limited to, the following:

(b) Failure of anticipated demand for water for the purpose of the reservation to materialize;

(c) Inadequacy of reservation facilities;

(d) Noncompliance with Montana or federal statutes or environmental standards;

(e) Incompatibility with local or regional planning efforts;

(f) Use of the reserved water for other than beneficial use as defined by Montana law;

(g) Noncompliance with any of the conditions of this Order.

(2) (a) Public notice shall be given of any review of the reservation;

(b) The Board shall provide for the public to comment on the review of the reservation, and, may hold public hearings.

106. Any and all liability arising from the reservation is the sole responsibility of the reservant. In ordering a reservation adopted, the Board assumes no liability.

107. Conditions of this Order may be modified or withdrawn by the Board in its discretion should future circumstances warrant. In such event notice will be given, and, if objections are received, a hearing will be held.

108. If part of this Order is invalid, all valid parts remain in effect. If part of this Order is invalid in one or more of its applications, the part remains in effect for all valid applications.

109. Paragraphs No. 76 through 109, granting and conditioning the Bureau of Reclamation's Multipurpose reservations, and the Department of Natural Resources and Conservation District's reservation are ordered adopted effective at 4:25 o'clock P.M. on the 15 day of December, 1978.

Basil C. Leach
Chairman, Montana Board of Natural
Resources and Conservation

Wm H. Bertsche

Karl L. Lusk

Wilson F. Clark

Roy E. Huff